UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 1, 2010

9:42 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Motion of General Motors, LLC for Entry of an Order Pursuant to 11 U.S.C. Section 105 Enforcing 363 Sale Order

Transcribed by: Dena Page

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors and Debtors-in-Possession
767 Fifth Avenue
New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.
PABLO FALABELLA, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for the Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, NY 10036

BY: JENNIFER R. SHARRET, ESQ.

LAW OFFICES OF RUTLEDGE & RUTLEDGE, P.C.
Attorneys for Shane J. Robley
1053 West Rex Road #101
Memphis, TN 36119

BY: ROGER KEITH RUTLEDGE, ESQ.

NORRIS, MCLAUGHLIN & MARCUS, P.A.
Attorneys for Sanford Deutsch and the estate of Beverly Deutsch
875 Third Avenue
8th Floor
New York, NY 10022

BY: MELISSA A. PENA, ESQ.

THE LAW OFFICES OF BARRY NOVACK
Attorneys for Sanford Deutsch and the estate of Beverly Deutsch
8383 Wilshire Boulevard
Suite 830
Beverly Hills, CA 90211

BY: BARRY B. NOVACK, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
Attorneys for Legal Representatives
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: JO E. HARTWICK, ESQ. (TELEPHONICALLY)

ALSO PRESENT:
TERRIE SIZEMORE, Pro Se

P R O C E E D I N G S

THE COURT: We have GM on for 9:45 and it's a little bit early. Let me ask if people are ready to go on GM. Is everybody who would want to be heard on that -- I think I need to hear, in addition to the debtors, from Ms. Sizemore -- or, Dr. Sizemore. I hope you're on the phone. Are you on the phone, Dr. Sizemore?

COURTCALL OPERATOR: She has no appearance for that matter, Your Honor.

THE COURT: Okay, I heard you but not very loudly, so I'm going to ask you to speak up.

Mr. Rutledge?

COURTCALL OPERATOR: Your Honor? Your Honor?

THE COURT: Are you Dr. Sizemore? Oh, you came personally, after all. All right, very well.

MR. RUTLEDGE: Your Honor, I'm Roger Rutledge. I'm here from the Western District of Tennessee. I have a motion for appearance pro hac vice before the Court and would hope that the Court would grant that.

THE COURT: Of course. Welcome.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: And on behalf of the -- is it Deutsch litigants?

MS. PENA: Yes, Your Honor. Melissa Pena from the law firm Norris, McLaughlin & Marcus. I serve as local counsel for

Sanford Deutsch. I have with me, today, Mr. Barry Novack. He's an attorney in good standing with the State Bar of California. We just filed his pro hac papers today; I'd like to just move for his admission.

THE COURT: Of course. Welcome.

MR. NOVACK: Thank you.

THE COURT: Granted.

Okay, you know what, Patrick, could you turn off the blower, please?

Okay, folks, let's come on up, please, for the GM motion to enforce the 363 order. And then after everybody makes their formal appearances, I'll want everybody to sit down. I have some preliminary comments.

MR. RUTLEDGE: Does Your Honor want all the parties at counsel table that are responding or objecting to the motion of GM?

THE COURT: Yes, except only for the fact that if you're local counsel isn't going to be saying anything, it's optional for them. But I would like all of the counsel for Mr. Robley and the -- is it Deutsch? Forgive me.

MR. NOVACK: Deutsch, Your Honor.

THE COURT: Yes, the Beverly Deutsch family and also Dr. Sizemore to be up where they can be heard, although when you speak, I'm going to ask each of you individually to come to the main lectern, if you would, please. Okay.

Actually, I don't know if I need to make you folks repeat yourself. I have Mr. Rutledge, Mr. Novack and Dr. Sizemore, and for the debtor -- I'll take a formal appearance.

MR. KAROTKIN: For General Motors, LLC, Your Honor, Stephen Karotkin, Weil, Gotshal & Manges.

THE COURT: Okay, Mr. Karotkin. And with you?

MR. KAROTKIN: Is Mr. Bonomo (ph.) from General Motors, LLC. He's in-house counsel. And my colleague, Pablo Falabella, from my firm.

THE COURT: All right, very well. Okay, have seats everybody.

Folks, I want you to make your presentations as you see fit, starting with Mr. Karotkin. But when you do so, I want you to emphasize and focus on the particular questions and concerns that I'm going to identify for you now.

First, Mr. Rutledge, your -- the way you handled the commencement of the lawsuit, given your need to preserve your position and to tee it up for judicial determination was a text book example of the right way to do it in terms of acting responsibly. But I have some questions and concerns concerning your underlying motion -- or, your underlying objection. I want you to focus, vis-a-vis your notice position, in particular, as I want Mr. Karotkin to do when it's his turn, on the decision by Judge Cyr who -- of the First Circuit who, as we know, was a former bankruptcy judge because I think I need

to assume, for the sake of discussion, that Western is correct, but it says quite explicitly that that was a case in which notice by publication wasn't given, and that strikes me as a huge distinction.

I also need help from you, Mr. Rutledge, in focusing on the extent to which I can now hear argument on this when I ruled on the matter of notice when I issued the 363 order on the Fourth of July weekend last year because, unless I'm mistaken, there is an express finding on the matter of notice. And while I think that the facts could at least arguably be different if your client had already been known to Old GM or New GM, there is no basis in the record upon which I can make such a conclusion that either of the two GMs intentionally did not give you notice.

On the second issue, Mr. Rutledge, the successor liability issue, it seems to me that subject to your right to be heard, that you've got a res judicata problem, and that while I'd be amenable, I suppose, to your keeping your actions stayed as contrasted to dismissed until all appeals opportunities have been exhausted, I don't see how I can revisit the underlying issues in the second half of your brief for as long as my decision from last year and the district court affirments say what they say they do and remain good law.

Dr. Sizemore, I need help in understanding the legal bases for your position, either the underlying contention or

the need for further discovery. It's not as fleshed out as the one that Mr. Rutledge filed in this court. And I have some material difficulties in seeing how your lawsuit can proceed given what the documents say.

Now, apropos what the documents say, that ties into the third of the objections to the motion, yours, Mr. Novack. As a preliminary matter, I need help from both sides because, Mr. Novack and Mr. Karotkin, it appears to me that neither side quoted what I understand to be the relevant language in 2.389 which appears not in the first amendment which each of you quoted to me, but in the ARMSPA as it was in next to the sale order which seems to have different language in it than either side quoted. And what I would be tentatively inclined to base my ruling on would be the language in the ARMSPA as in next to the sale order in 2.389 that says, "accidents, incidents, or other distinct and discrete occurrences", which seems to me to be the key words that I've got to work off, rather than the "accidents or incidents first occurring language" that appears in the first amended MPA that each side quoted in its brief. Now, if I'm mistaken in that regard, don't be diplomatic, folks. Tell me so. But it seems to me that on the very unique facts that you have, Mr. Novack, I have to construe the ARMSPA in light of whatever the proper contractual language is, which I think is the one I just read.

And then I ask -- I need you folks to concentrate on

how a judge would construe the words "accidents, incidents, or other discrete occurrences" because those words seem to talk about what caused everything thereafter, in contrast to when the cause of action legally arose.

As my hesitancy in my articulating that suggests, I think the third issue was the closest of the three that I have here, but I want help from both sides on that. The two things that I need help from you the most on is that First Circuit decision in Western Auto Supply Company v. Savage Industries and the proper construction of the agreement.

Mr. Karotkin, you want to take a second, and then I'll hear from you first.

MR. KAROTKIN: Good morning, Your Honor. Stephen Karotkin, General Motors, LLC, for the moving party.

Your Honor, we believe that our motion and our pleadings and our responses are pretty much self-explanatory. As you know, there are six lawsuits involved. And just by way of quick background, only three responses were filed, to which you already alluded. R. J. Burn already has agreed to dismiss its lawsuit, and the other two respondents did not file any responsive pleadings.

I think that you've certainly put your finger on the issues that are relevant today with respect to the first item in Judge Cyr's decision, as you noted, and as we noted in our pleadings, there is certainly a very, very significant

distinction in that case as compared to the incident case where notice by publication was given; it was wide-spread. As Your Honor indicated, you expressly found that notice by publication was sufficient. There is no indication on the record or otherwise that General Motors, which is now MLC, had any actual notice of this claim. The lawsuit was not filed, I don't believe, until November 23rd, 2009, as indicated in Mr. Robley's pleading. And under the applicable law and rules, notice by publication was sufficient.

Moreover, Your Honor, as you surely know, the proposed financial difficulties of General Motors Corporation, the Chapter 11 filing, the sale that was going to take place before this Court at the end of June about a year ago was notorious and widespread in the papers. In addition to your finding that publication was sufficient and under those circumstances, as I think you've already indicated, we believe notice was sufficient. We believe notice complied with due process. The suggestion that we should have given notice to every single consumer who bought a General Motors vehicle is not supported by any authority that I'm aware of. It would have been virtually impossible to do, certainly in the context of the time frame we were dealing with. And again, we think the notice was more than adequate to comply with Mullane in due process.

I would also point out, and I think you indicated that

as well, that notwithstanding the issue of notice, the issue that has been raised by Robley with respect to selling free and clear of product liability claims was fully litigated at length in the three-day sale hearing before this Court. Your Honor ruled on the issue. Judge Gonzalez, as you indicated yourself, ruled on the issue. It was sustained by the Second Circuit, and as, again, you mentioned at the outset, we believe that that issue is res judicata. In addition to which it's --

THE COURT: Pause, please, Mr. Karotkin. I assume that New GM isn't prejudiced in any material way if that lawsuit remains stayed as contrasted to me ordering that it be dismissed until the time for all appeals has been exhausted?

MR. KAROTKIN: That's correct, and they have absolutely no objection to that.

THE COURT: All right, continue, please.

MR. KAROTKIN: And I think that, Your Honor, that really disposes with the Robley objection. With respect to Deutsch, again, you referred to the language that refers to "accidents, incidents or other distinct and discrete occurrences" that happened on or after the closing date. This clearly happened prior to the closing -- well prior to the closing. And again, as we mentioned in our pleadings, Your Honor, the fact that the cause of action may have arisen under -- I believe it was California law upon the death of the plaintiff in that action really is of no relevance. And we

think that the pure words of the contract dictate the result that this action must be dismissed as well.

THE COURT: Pause, please, because I didn't understand Mr. Novack to be arguing that we could ignore the contract, but I think that he was trying to argue that although the accident undisputedly took place before the closing, that the death was an incident. And because both sides were arguing different contractual language, I don't think you focused on "other distinct and discrete occurrence". Do you want to comment on whether the death can be regarded appropriately as an incident in contrast to an accident?

MR. KAROTKIN: I think, Your Honor, that the death, if it was the result of the accident, certainly was a byproduct of that, but it was not an accident or incident that occurred prior to the closing. And I think that it's very clear that whatever happened in the incident which gave rise to the cause of action -- or, the accident which gave rise to the cause of action clearly happened prior to the closing, as well as any distinct or discrete occurrences. All of that was the result of the accident, or allegedly the result of the accident that happened well prior to the closing, and I think that's the only logical interpretation of the purchase agreement and what was intended.

THE COURT: Okay, continue please.

MR. KAROTKIN: With respect to the Sizemore objection,

I think -- I think what Dr. Sizemore is saying is that she is entitled to discovery and should not be compelled to dismiss her lawsuit until General Motors, LLC has complied with discovery. Again, as we indicated in our pleadings, Your Honor, it's not a condition to your order or a violation of your order that General Motors be compelled to comply with discovery prior to or, as the condition to being dismissed from the lawsuit. To the extent that third party discovery is appropriate from General Motors, LLC, under the rules, under whatever procedures are appropriate in the non-bankruptcy court action brought by Dr. Sizemore, General Motors is obligated to comply with appropriate third-party discovery and will do so. It's my understanding that they already have furnished discovery to Dr. Sizemore, and all we are suggesting is that General Motors be dismissed and, again, to the extent that Dr. Sizemore believes she is entitled to discovery, that can proceed under the applicable rules of that non-bankruptcy court forum.

THE COURT: Well, if her action were dismissed, what would her basis for getting discovery to be. I'm a little puzzled by that. Saying that she has a right to discovery doesn't seem to make a whole lot of sense to me in light of what I understand you're looking for and what I would be -- or the variant, which is what I'm thinking about, which is staying that litigation until the matter of the underlying free and

clear order I issued either gets up to the Circuit or all appeals are dismissed. But I don't see how she has a valid lawsuit upon which to bring discovery or to seek it if I give you what you're looking for. Now, I assume she has a proof of claim in this court, and she can get third-party discovery against New GM to the extent that she can't get what she wants from Old GM, but I thought I heard you saying something different.

MR. KAROTKIN: Number one, we're not aware of Dr. Sizemore having filed a proof of claim against Old GM. We've checked the records, and there's no record of a proof of claim on file. If we are mistaken, I'm sure that Dr. Sizemore can correct me, but we have checked the docket and we don't see it.

Secondly, her lawsuit also was against -- or, is against a supplier. And to the extent that discovery would be appropriate as against General Motors, again, third-party discovery can proceed.

THE COURT: I'm with you now. Okay, continue.

MR. KAROTKIN: And Your Honor, unless you have other questions --

THE COURT: No. I'll give you a chance to comply and I'll give your opponents a chance to surreply.

MR. KAROTKIN: Okay, thank you, sir.

THE COURT: But let me hear next -- let me hear from Dr. Sizemore next, please.

DR. SIZEMORE: Thank you. I apologize; I'm a little nervous and I appreciate your patience.

He was incorrect in saying that the lawsuit is against a supplier. That's not correct. I believe I said in my objection that I was injured a little over two years ago, in January of '08, in a car accident; my airbag did not deploy. I felt I met the criteria for the bag to deploy. The Old General Motors Company sent a field investigator named Mr. John Ball (ph.) to inspect the vehicle. He promised me the details of the engineers' conclusions of his data. He inspected every aspect of the airbag.

I have been in conflict with General Motors, the Old and the New, for the details of that report since about March of '08. I wrote several letters to General Motors; they refused to respond to me at all. They said that a company named ESIS handled their product liability issues; I was to contact them. They've refused to give me the information. I contacted the Ohio Attorney General's Office because they have a consumer protection department. In doing that, they petitioned the information from the Old General Motors. The Old General Motors has supplied about this many pages of documents, but I have read every page that General Motors has supplied, and the information that I requested is not in those pages. When I received -- I received a crash data report from Mr. John Ball, some of the data that he collected is included

in here, as far as the deceleration event, the speed of my vehicle, the fact that the airbags were enabled at the time of my accident. But there's this hexidecimal fraction of this report that is computer gibberish to me and not understandable. So I asked for clarification of that and have never received it.

Also given to the Ohio Attorney General's Office was a report from an engineer named Mr. John Sprague (ph.). I contend that that report is fraudulent and it is not based on the information that John Ball obtained during the inspection because I was present during the inspection. And John Ball told me part of the information he had received: the speed of my vehicle, the impact, the reason that the airbags did not deploy. There's a picture that I was sent by General Motors in a collection of pictures that stated there was a class 2 malfunction. The explanation of that is not present in the material that was sent to the Ohio Attorney General and to me. And I was frustrated, and I told the Ohio Attorney General that what was missing in the report, and so they petitioned General Motors again, and General Motors, again, refused to respond -- the Old General Motors.

Also, I contacted federal representative Bob Latta's office. I have a message on my cell phone from that office that states that they contacted the new company, General Motors Company after the commencement of the bankruptcy. They said

they did not mention any of the issues of the bankruptcy and the fact that my accident occurred prior to the commencement, so it would not be their responsibility. Bankruptcy issues were never discussed. So what General Motors Company advised Federal Representative Latta's office to do was to contact Aesis, which claims to be General Motor's central claims unit. After all these -- and that was in August of '09. So I have August 18th as General Motors Company responding but never really providing any information.

So through frustration and through not knowing exactly how to proceed, I did file a claim against General Motors Corporation in civil court. And I was sent a letter by Ms. --

THE COURT: By that, you mean in Ohio?

DR. SIZEMORE: Yes.

THE COURT: Um-hum.

DR. SIZEMORE: Yes, where I purchased the vehicle.

THE COURT: Um-hum.

DR. SIZEMORE: For product liability. I was sent a letter by Brianna Benfield, who I understand works for the same firm that is present today, and she said in her letter that all actions against General Motors Corporation were void and that my action violated, I think, 362(a). I do have a copy of her letter. In her letter, she never offers me a proof of claim form and she never directs me to bankruptcy court. She just says that all claims are void, and if I didn't withdraw them,

then I would be in contempt of court. And I am basically a law-abiding citizen; I don't do things incorrectly intentionally. So I did withdraw them. And when I had a phone conversation with her, she explained to me that there was a new company called General Motors Company that had assumed responsibility. Whether that was correct or whether I misunderstood, I'm not sure. But she also said that my claim against ESISwas valid.

When I proceeded in civil court in Medina, Ohio, I had written to the judge that I claim to have a good heart but empty head and I understood that I could have possibly made some mistakes, but that I had made every honest attempt to gather the necessary information to not make those mistakes. Judge Kimbler was confused; I have a transcript of the hearing during -- on December 1st in Medina County, and he petitioned Mr. Popson, who was representing ESIS at the time, but ESIS told me that General Motors Company was paying him to represent Aesis. But Mr. Popson stated to the Court that ESIS was not the proper defendant because they did not manufacture the vehicle and they did not sell the vehicle to me. So according to Civil Rule 12(b)(6), I was dismissed. But I held the understanding that even an insurance company can be joined to civil litigation if it's appropriate or necessary. But that was disregarded.

THE COURT: Doctor, I want to interrupt you for a

second because I think you may be concerned that I'm going to take action against you for having violated the earlier injunction or anything like that, and I want to take that off the table both for you and the other two litigants who are here. I see the legal issue not as whether anybody is guilty of contempt or should be sanctioned or punished in any way but rather the extent to which the litigation should continue in light of what the sale order said and what the purchase agreement said.

So I'd like to ask you to turn to that. And I telegraphed some of the concerns that I have when I was commenting on the two lawyers who are representing their clients. And if you have anything to help me on that before they speak, I'd like you to do that, please.

DR. SIZEMORE: Okay, well, I appreciate your not wanting to punish me because that was one of the reasons that I came up here, because I don't feel that if I made a mistake, it was entirely my fault.

THE COURT: Of course, I understand that.

DR. SIZEMORE: So in all of this confusion, I filed an action for discovery in civil court because I wanted the details. My first question in the action for discovery -- which I believe I met all of the requirements of the revised code required -- was that General Motors Company provide me with the details of the bankruptcy and if there's anything that

I needed to know to prevent being here in bankruptcy court in New York or violating any bankruptcy laws at all. And then there were several others; I have the list of questions with me. They were simple questions; I've asked the lawyers for General Motors if that action for discovery violated any bankruptcy laws or issues. They have not provided me with that. So I was under the gun for the statute of limitations in January of this year to file. So without the needed information, I filed against the company because I had read newspaper articles, talked to different people, had some, what I believed was misleading and false information from both the Old company and the New company as to where the liability was supposed to be. And so I did put the company as the defendant and then John Does were listed. There were no other defendants except for them.

Mr. Popson -- and I believe he did this in order to invalidate my action for discovery and get out of answering the questions properly -- filed an answer. And when he filed a motion to dismiss my action for discovery, he said that I had enough sufficient information to file a claim. But that statement, in my opinion, is false because I didn't have sufficient information and I apparently made a mistake by putting the company down as a defendant. But Mr. Popson made -- he did answer the complaint, and then he gave me verbal instruction to serve discovery request upon him according to

Civil Rules 33 and 34, which I said, if General Motors Company is not a legitimate defendant, I don't feel that I can serve discovery requests through 33 and 34, so I did not. I said if you are willing to answer discovery request, then please answer my action for discovery.

Well, he invalidated that action for discovery completely, but I still maintain that that was legally executed and did not violate bankruptcy laws, and so I'm in the ninth district because General Motors Company failed to comply with Civil Rule (a)(1) requiring them twenty-eight days --

THE COURT: Pause, please, Dr. Sizemore. I don't want to cut you off, especially since you traveled so far, but you're getting a little bit afield. I need you to concentrate on the bankruptcy issues that are before me and what the purchase agreement says. So when I -- when you continue, which will be in just a moment, I want you to focus on that, please.

Before you do, though, I would also like you to help me -- I had always assumed that a DVM is a veterinarian.

DR. SIZEMORE: Yes.

THE COURT: And an RN is a nurse. Do you have legal training? I saw your pleading. It looked like either you had at one time gone to law school or somebody with legal training had helped you.

DR. SIZEMORE: No, I've done research independently. I am medically trained. I have -- my background is completely

medical --

THE COURT: Okay.

DR. SIZEMORE: -- for over thirty years.

THE COURT: Fair enough. Then, you want to continue, please, with bankruptcy doctrine, cases, statutes, as to why you should win. For the purposes of the issues that are before me, I don't have the power to decide whether or not you were injured by a GM vehicle or whether GM did anything wrong.

DR. SIZEMORE: I understand that, and in all honesty, I guess my position is that I am very unsure of any of the bankruptcy issues. I feel that General Motors owed me, as a consumer -- and they did -- the attorney who was standing here, I believe I did receive some notification in the mail that really didn't make a lot of sense to me as far as the bankruptcy that happened because I had an '04 vehicle, and I now have an '07 vehicle. But my -- if I made a mistake, it was unintentional, and I don't know how to plead because if I -- I can't deny that I made a mistake because there's a possibility that I did. But I can't --

THE COURT: Well, you don't have to plead guilty or not guilty like you would if you were in a criminal court. I would suggest to you that you let the two lawyers speak because the two of them have more directly addressed the bankruptcy issues that I need to deal with.

DR. SIZEMORE: Okay.

THE COURT: Thank you.

Okay, may I hear next from Mr. Rutledge, please?

MR. RUTLEDGE: Thank you, Your Honor. I'm Roger Rutledge from Memphis, Tennessee, and I appreciate the opportunity to be before the Court this morning. I know that this case has been unbelievable; it took me a while before I found out that there was a single web site devoted solely to documents filed in this case. And it's just an amazing case. I know that the Court was faced with a tremendous responsibility in those forty days from the day that the petition was filed until the transaction that consummated the sale order and that, really, I want to acknowledge that the Court stepped up to the plate and did what needed to be done for the sake of the whole country, and especially in the face of a looming disaster. And I would submit, Your Honor, that this morning, the disaster has been averted, that we have an opportunity to go back and deal with some of the things that, at that time, would have been considered to be less significant, and to hopefully do the right thing, which is why I'm here.

I represent Shane J. Robley, a young man, twenty-seven years old --

THE COURT: Who I sense is a paraplegic, and I'm very sensitive to the personal circumstances of your client.

MR. RUTLEDGE: Thank you, Your Honor. He is, indeed,

a paraplegic, and after -- he was driving a GMC Jimmy which, along with a Chevrolet Blazer, has the worst rollover tendency ever recorded by the National Highway Traffic Safety Administration. This accident is one that definitely was tragic; that's all we can say about it. And after it happened, for probably the six months that ensued after -- it was November of 2009, the end of November, he was, for sixty days, in the intensive care unit of the hospital. And then, in the succeeding months, he was under treatment and learning how to live in a wheelchair.

And so, we come up to June the 1st, and the notice by publication. And I would not differ with counsel for GM, but under normal circumstances, notice by publication reaches most people in a bankruptcy case. It's commonly used, and I certainly don't take issue with the general acceptance of the certificate of publication that the Court made at the time of the entry of the order. But I would submit, Your Honor, that under the test of Mullane v. Central Hanover Bank and Trust Company and other authority, that the notice in this case was not reasonably calculated to reach Shane J. Robley or people like Shane J. Robley.

I took the liberty, Your Honor, of reproducing from the record at www.motorsliquidation.com the actual publication notices. It was published one time in these publications, four of which came out in Canada. And I would just submit to Your

Honor that the small type and the language of the notice was simply insufficient to give a person in Shane J. Robley's situation any kind of understanding that his rights were going to be just affected but potentially extinguished by the procedure that was taking place in June of 2009.

Your Honor, this is -- frankly, the Court, in June of 2009, was faced with a hard case. And this case has the potential to be a classic illustration of the old axiom that hard cases make bad law. But we have the possibility, also, to go back and look at what has happened and make some good law in the aftermath. Certainly, at the time, it was a necessity to -- and this was all articulated in the ruling of the Court -- the exigencies of that -- or, the circumstances that the Court faced were so dire that to avoid potential liquidation of this huge company and all of the harm that would flow from that, it was appropriate to use the expedited procedure to solve the problem.

Similarly, it's appropriate at this stage, looking back on it, to say if we used an expedited procedure, and there were good reasons for doing that -- but if a man named Shane J. Robley was left out and was out in the cold, and if we live in a country that is ruled by procedural due process and that there was a problem there, that we can fix it. Now, the Court --

THE COURT: Pause, please, Mr. Rutledge.

MR. RUTLEDGE: -- the Court --

THE COURT: Pause, please. If GM knew back then that your client had already been injured and chose to use the publication route rather than a way that would get to him more directly, that kind of factual circumstance would have troubled me. But at the time of the sale hearing, am I right in my understanding that GM didn't know anything more about your client other than the fact that at one time, he had bought a GM vehicle?

MR. RUTLEDGE: I believe that is correct, Your Honor. At the time, Mr. Robley was, as I say, under medical care and had really not come to a full understanding of his position with regard to what had happened.

But just coming to the issue that counsel for GM made regarding the notice, he stated in argument that under the applicable rules, notice by publication was sufficient. Now, bankruptcy law makes it the responsibility of the party in bankruptcy, basically, the debtor-in-possession or the trustee, to see to it that adequate notice is given. It's not handled by the Court, as it was before 1978. So in this respect, the Court was really depending upon GM to do the job. As we heard this morning in argument by GM's counsel, they were depending upon the news media to do their job. They did one notice by publication in the newspaper and assumed that that was going to be picked up and everybody would know -- a product liability

would know that this hearing was going to take place in which he could possibly lose all his rights. I submit, Your Honor, that there is an analogous situation in which automobile manufacturers routinely contact owners of their vehicles, and that is the -- either the recall or the National Highway Traffic and Safety Administration issues orders from time to time directing companies to contact owners about a defect or a problem. And they routinely do it. Now, I submit, Your Honor, that in the case of notice in a bankruptcy proceeding, except for the haste that was called upon because of the particular circumstances facing the Court at that time, there was no excessive burden upon GM either financially or in terms of its capability of accomplishing such a feat to issue notice by mail. Failing that, at the very least, they could use the same type of notice that goes out in class action lawsuits, notice -- I mean, direct advertisements on the media, television, and something that came right out and said if you were injured in a GM vehicle, your rights could be terminated by this proceeding.

Now, I found it interesting that Dr. Sizemore received a letter from Brianna Benfield because, as we say in our filing, a letter -- we received a letter also. And I found it very interesting, also, that that letter did not enclose a proof of claim form or anything to try to give notice of where Dr. Sizemore stood or where Mr. Robley stood with regard to

these proceedings.

THE COURT: Pause, please. Did I understand you to say that you had a similar communication with her?

MR. RUTLEDGE: That is correct, Your Honor.

THE COURT: And she didn't tell you about the claims filing process either?

MR. RUTLEDGE: She did not, Your Honor.

THE COURT: And either by other means or otherwise, have you ultimately filed a proof of claim against Old GM on behalf of your client?

MR. RUTLEDGE: What I have done, Your Honor, is I contacted Ms. Benfield and I asked her if we could file a late filed proof of claim by consent. And I just received response to that last Friday.

THE COURT: And what did she say?

MR. RUTLEDGE: And she said no; she said that GM would not consent. So basically, we are here on behalf of Mr. Robley because this is his sole route of recourse, it appears, other than we will file and submit to the Court and seek the Court's consideration of a motion to allow a late filed proof of claim. Other than that, we have to do what we're doing today.

And Your Honor, what I -- I want to go down the list of the concerns that the Court has because they are the right concerns, and I want to address them. First, regarding the notice, in its response, GM states that the suggestion that the

analogous method of noticing a party, as I say, in the same method that is used in class action suits or in motor vehicle recalls, GM refers to -- calls that absurd, an absurd suggestion. But Your Honor, what is more absurd is to presume that those notices in those publications that ran one time would have reached those whose rights were being affected by GM's actions. So we would simply submit that under Mullane v. Central Hanover Bank and Trust and its Progeny, notice means that notice that is reasonably calculated to reach the person whose rights are being affected and gives that person an opportunity to be heard. This notice was published on June 9th, even though the order went into effect on June 1st. And it referred to the deadline for filing objections. We articulate all this; I'm not going to repeat what we've said in our filing, Your Honor. But essentially, less than twenty-one days expired between the time that the notice was filed and the closing took place. The -- Mr. Robley, if he had happened to have read one of those publications and happened to read that small print in that notice, Mr. Robley would have had exactly nineteen days to get ready for the hearing, and fewer than ten days to even file anything. So is that reasonable notice for a young man who's living in Tipton County, Tennessee? We would simply submit, Your Honor, that it's not. And the consequences of a failure to give adequate notice are well understood under the law. And that's where the case the Court asked about, the

decision of Judge Cyr's in the Savage v. Western Auto case comes into play. Because as the Court said, or noted there, not only was there no publication notice, but there was no other form of notice because of the timing of events in that case. But the sale order and the sale agreement purported to do exactly what was done in this case, that is to say, cut off product liability claims.

And there are two very important distinctions that are to be made when you're dealing with a product liability claim. Distinction number one is that it's in a whole different stream of legal development that comes down from the Macpherson v. the Buick Motor Car case. It's a strict liability. The rights of consumers under this branch of the law cannot be waived even by them, and as we've quoted from the restatement of Torts Third in our filing, the law just simply does not uphold the termination of rights in a product liability case.

Similarly, Section 363 of the Bankruptcy Act (sic) states that a sale can be approved if it's not contrary to non-bankruptcy law. Well, Your Honor, non-bankruptcy law in the State of New York, this concept of the exceptions to the general rule that you can pass assets free and clear of liens is actually more developed in the law of the State of New York and the law of the State of Delaware than any other state in the union, but it's a very common --

THE COURT: Well, pause, please, Mr. Rutledge, because

the arguments you're making have an amazing resemblance to those that were made by Mr. Jakubowski and perhaps others before me in June of '09. And he's a pretty good lawyer, too, and he made those points. And I ruled on them, and at least so far, that's been affirmed on appeal. Assuming, for the sake of argument, that under either Tennessee law or New York law or whatever law might ultimately be determined to apply to the underlying tort claim that there might otherwise be successor liability, don't we have a res judicata issue here?

MR. RUTLEDGE: Your Honor, we would have a res judicata -- I don't want to give the impression to the Court that I'm asking the Court to go back and rewrite the order that was entered in this case. It's not necessary to do that. The MPSA, the underlying agreement itself states that these claims will be passed -- or, kept by the Old GM, the claims for accidents preceding July 10th of 2009. Those claims would be passed to Old GM, and assets would be taken free and clear of those, and this is a direct quote from the MSPA, the master agreement, "to the extent permitted by law." So I'm simply -- I'm here asking the Court to uphold what has been done. The law does not permit, under the facts presented in Mr. Robley's case -- I'm not arguing -- I don't know who Mr. Jakubowski is; I've seen his name in the pleadings -- and frankly, Your Honor, I took from the Court's ruling the -- what was res judicata and what was not. Now, there's no question, the Court, in its

decision, has closely analyzed, A, whether a product liability claimant is a person with an interest in the case, and that's an interesting issue of itself; B, the Court did textual analysis of the Bankruptcy Code to determine what is the nature of an interest and whether the provisions of Section 363 would give the Court the authority to approve the agreement as it was written. And we take no exception to that; the authority is there. The question is whether we're going to follow the law or not. And we humbly submit that the agreement itself says "to the extent permitted by law", these claims would not pass to the New GM.

We simply say the law does not permit that to occur under the facts presented in Robley's case for two reasons. Number one, he did not receive adequate notice. What we're dealing with is something akin to a knowing and intelligent waiver of rights. Before you can do that, you have to know that there's an issue and what can take place and have an opportunity to be heard.

And then secondly, there is this confluence of two streams of law: one, product liability law, the other, commercial contract law. Most of what the Bankruptcy Code and the bankruptcy court deals with are claims that are rooted in commercial law. But product liability law is a different animal, and there are -- the authorities that we cite in our filing make it clear that it is to be accorded a different

treatment. Now, and under the facts of this case, there is no doubt that we have a continuation of the existing entity in a new form, that it is a de facto merger or consolidation because the Old GM disappears, and in its place is New GM. And it's very -- I found it interesting in preparing for this proceeding to note that the president -- and I think the Court refers to this as well in the proceedings -- the president -- of course, you know, the United States government, the Treasury was very deeply involved in the process -- the president, in talking about what the government wanted to have happen, says, or said, "What I am not talking about is a process where a company is simply broken up, sold off, and no longer exists." In other words, the vision, from the beginning, the vision that was built into all the proceedings was that there would be continuity, that the value wouldn't be lost, that the trademarks, the trade names, the product lines, and so forth would continue. The business would be done -- all the UAW and nonunion workers were taken over into New GM. And under those clear rules of law relating to the exceptions to the general rule that assets can be taken free and clear of claims, in the face -- under the law, it's not permitted extinguish Robley's cause of action under the facts presented here. And similarly, it's not permitted because it's a products liability claim. Even Robley could not waive that claim under the law as it exists today. So it's not a commercial law claim, it's not

like a contract claim or those matters having to do with rents and leases and the equity in the company and all those things that are -- basic pension claims that are dealt with in this case, this is a particularly different category of claims, and under the facts presented here, we submit that the Court has to take into consideration these differences.

Your Honor, the issues of res judicata might be pertinent if we were asking the Court to rewrite the order or rewrite the master agreement. We're not doing that. We're just saying under the facts in this particular case, if you apply them according to their very terms, that Mr. Robley's claim can lawfully be brought against the New GM and that it should not be dismissed, or he shouldn't be ordered to dismiss it. And so I can only say that if another lawyer stood here and made similar arguments, I can only say that in the ruling of the Court, there is no analysis of the exceptions to the general rule; there is no real finding that in a products liability matter, that the facts presented in this case having to do with product line and continuation and what I've just covered that there's no finding that those exceptions don't apply; let me put it that way. The facts clearly comport with the decisions we've cited in our filing that apply those exceptions under the facts presented in this particular case. So I'm, again, I'm not arguing for anybody but Shane J. Robley, but he is in the position in which without the finding of the

Court on this motion and objection which we've filed that would enable him to go forward in this case, he's without recourse. And that is simply unjust. And we're here seeking justice for Mr. Robley.

The Court has indicated that the Court would be amenable to a stay pending appeal, and I was going to ask for that if the Court is inclined to rule against our objection because this Court and the Second Circuit have both noted that there is a conflict among the circuits as to this issue of successor liability and the extent to which it can be extinguished. And so it is a matter of vital importance to Mr. Robley, and so I would ask the Court to give us a chance to do that, if we have to.

But I would submit, Your Honor, that this Court has the power to interpret its own orders; this Court has the power to rule further on particular facts and circumstances presented in a matter of such as we're hearing today. I would submit, Your Honor, that the contentions of GM that this particular issue regarding res judicata or concerning successor liability in a case like Mr. Robley's is res judicata on the record does not appear. In other words, what the record shows is the Court found that it had the power to approve that provision and approve the agreement with those provisions in it. And certainly, the drafters of that agreement did all they could to cover the waterfront; there's no question about that. So the

Court found that it has the power under Section 363 to do that, but Section 363 is not a federal preemption statute. In fact, there are cases that say that if you have federal preemption, it has to be expressed by Congress. And in fact, Section 363 defers to state law under subsection (f). So we don't have a situation where federal law trumps state law or anything of that sort. What we have is res judicata on the ability of this Court to enter an order under the facts presented back there in June and July -- as the Court said, 4th of July -- the Court had the power to go ahead and approve the sale. But just having the power doesn't mean it's right to do something that works an injustice. And that's why we're here today. It's an opportunity, really, in the case of this individual who has no other way to protect himself or to have recourse in the law to be able to proceed with his case.

And so Your Honor, we respectfully submit that Mr. Robley should be allowed to proceed with this case. I would only close by saying I did a little bit of math -- I'm not really good with these large numbers, but I determined that in the last quarterly report of GM before -- and the Court refers to this in its ruling -- before the bankruptcy filing that I think the amount of contingent liability for product liability claims was 974 million dollars, which is 1/75,000th of the value of the New GM. So we're talking about, even though it's of enormous importance to an individual like Shane J. Robley,

we're talking about an amount that is miniscule to GM and New GM, either Motors Liquidation or to GM, but it's miniscule in this case; let me put it that way. I feel a little bit like a mosquito on the back of an elephant. But I'm here. And Your Honor, that's not to minimize the importance of everything that has happened, but it is to say that the Court has an opportunity here to do justice, and we just ask the Court to take that opportunity and to rule -- rule in denial of the motion made by General Motors.

THE COURT: Thank you. Mr. Novack.

MR. NOVACK: Good morning, Your Honor. Barry Novack, N-O-V-A-C-K, appearing pro hac vice on behalf of Sanford Deutsch, personal representative of the estate of Beverly Deutsch.

Your Honor, I appreciate the fact that you pointed out that language from Section 2.3(a)(ix) because that is the very language that we incorporated in paragraph 3 of our third amended complaint which brings us here today. I'm not going to talk about what the New GM did not accept in terms of liability. I'm going to talk about what they agreed to accept because I think that brings this case into focus.

As I stated in my letter of February 9, 2010, which is attached as an exhibit, I believe it's Exhibit M or N to the motion, the section in question says that the New GM will "accept all liabilities to third parties for death, personal

injury, or other injury to persons or damage to property caused by motor vehicles designed for operation on public roadways which arise directly out of accidents, incidents, or other distinct and discrete occurrences that happen on or after the closing date and which arise from such motor vehicle's operation or performance." Paragraph 3 of the third amended complaint brought in the wrongful death action says, "the events giving rise to this cause of action stem from an automobile accident that occurred at or near Beverly Boulevard and Formosa Avenue, Los Angeles, California, and arise directly from a distinct and discrete occurrence that happened on August 2nd, 2009, namely the death of Beverly Deutsch from injuries sustained in the accident." It appears from the language where they accept liability for accidents, incidents, or other distinct and discrete occurrences that happened after the creation of New GM is to exclude any claims that were ripe and could have been brought prior to the creation of the New GM, and that they will accept all claims that arise after the creation of the New GM. While it is true that the accident involving Beverly Deutsch happened two years earlier, she was in a coma for a long period of time, she died from complications of the injuries she received, and died on August 2nd, 2009. The language that forms the order using the words "other distinct and discrete occurrences", we contend, without any definition of those words in the agreement and order, that

the death of Beverly Deutsch arising from injuries that preceded the creation of New GM, that death was a distinct and discrete occurrence. Those words, we believe, uniquely allow the heirs of Beverly Deutsch to bring a wrongful death action, a new action, a statutory action that did not exist prior to the creation of the New GM. So we're talking about a unique set of circumstances, and all we have to look at is the very language that was agreed to by the New GM, namely, was this an accident that happened afterwards? No. Was this an incident that happened afterwards? Perhaps. However, was this a distinct and discrete occurrence that happened afterwards? Yes. And because there is no definition of what a distinct and discrete occurrence is, if within the four corners of the agreement, we can bring our case into the category of cases that they have agreed to accept, then the language should be construed against them and in favor of my client and allow the wrongful death action that did not exist prior to the creation of the New GM to proceed. And that is all I have to say on the subject, Your Honor. Unless the Court has any questions?

THE COURT: No, but before you reply, Mr. Karotkin, I want to take a couple notes.

Thank you.

MR. NOVACK: Thank you.

THE COURT: Mr. Karotkin.

MR. KAROTKIN: Thank you, Your Honor. Stephen

Karotkin for General Motors, LLC.

Let me address Mr. Novat (sic) -- I'm sorry, Novat? -- Novack first, and I think there's actually a very simple answer, when you look at the language that Your Honor referred to and that was referred to by counsel. When he refers to a distinct and discrete occurrence, simply put, it is not a distinct and discrete occurrence independent of the accident or incident which took place prior to the closing. It merely flows from that. And for this to make any sense, it has to be a distinct and discrete occurrence independent, totally independent from what happened prior to the closing, which was when the accident occurred, and I think that that, Your Honor, is the only explanation of that language that makes sense and is very clear from the provisions of the MSPA.

Now, going back to Dr. Sizemore --

THE COURT: Is it, Mr. Karotkin? Or should I or any other judge conclude that when the extra words "other distinct and discrete occurrences" were added, they were added for some reason?

MR. KAROTKIN: No, I don't think so. They were added to cover, perhaps, something other than an accident or incident that occurred prior to the closing, but they certainly weren't added to cover something which arose directly from the event which occurred prior to the closing, Your Honor. That would not make any sense at all. You can't divorce what happened to

Ms. Deutsch from what occurred prior to the closing. It arose directly from that. It's not an independent or discrete occurrence.

May I proceed?

THE COURT: Yes, you may.

MR. KAROTKIN: With respect to Dr. Sizemore, I don't believe that Dr. Sizemore has raised anything to support a continuation of the lawsuit against General Motors, LLC. Whether or not -- and I believe this would be true for Mr. Robley as well -- I think they try to sort of cloud whether or not they have a right to file a proof of claim at this point or not, whether there is an independent basis to file a late proof of claim, but that's not the issue here today, and that can be addressed at another time.

The issue here today is whether or not they can continue the action as against New GM, and I think that the facts clearly demonstrate that Dr. Sizemore cannot do that. As I said, to the extent that Dr. Sizemore believes she was mislead, to the extent she believes that she received inconsistent information from people from my firm, which, Your Honor, we hope is not the case and we expect is not the case, again, that can be addressed by Your Honor in the context of whether or not Dr. Sizemore wishes to file a claim. I think, and I'm not sure, but I think that she did indicate or certainly did suggest that she did receive notice of the bar

date. And notwithstanding that, our files do not reflect that she filed a proof of claim.

With respect to Mr. Robley and Mr. Rutledge's argument, he acknowledged -- he acknowledged on the record that General Motors or MLC did not know about his claim at the time that notice was given of the sale hearing, or for that matter, at the time of the sale hearing. So under those circumstances, publication notices, as you found, Your Honor, was appropriate. Moreover, and again, I think that Your Honor indicated this again, all of the issues -- all of the issues that he would have raised in this court had he been given notice were squarely addressed by Your Honor. His suggestion that Your Honor did not consider issues of successor liability clearly is not the case. As you indicated, Mr. Jakubowski and others raised that issue with you; in fact, Mr. Jakubowski took it up to Judge Buchwald in the district court. And again, all of the issues that were raised here, all of the issues as to allegedly that this claim is just a miniscule part of the assets of New GM, were raised and rejected by Judge Buchwald. And all of those issues were raised again before Your Honor.

The first we heard that Mr. Rutledge or Mr. Robley received some correspondence from my office was when he was standing up here today. None of that is reflected in the pleadings. And again, Your Honor, to the extent that Mr. Robley believes he is entitled to file a late proof of claim, I

find it a bit curious that they haven't done anything yet. I find it a bit curious that in January of this year, he was advised of the fact that the assets had been sold. Again, nothing happened; he didn't make any effort to file a proof of claim. And basically what Mr. Rutledge is asking Your Honor to do is to rewrite -- to rewrite your sale order solely with respect to Mr. Robley. And we suggest, Your Honor, that that is completely, completely inappropriate.

I'm not sure I understand his request for a stay pending appeal; that can be addressed at a later time. I think Your Honor did indicate that you would hold things in abeyance --

THE COURT: Well, I understood him to be asking for the kind of relief that I had asked you about in your opening remarks.

MR. KAROTKIN: And again, as to the pending appeal, and to the extent that those are not final, again, we have no objection to that. But to the extent that he's seeking an independent stay-pending appeal with respect to whatever ruling Your Honor may make today, that's a different issue which we would like to address, if that's the case. And unless you have any questions, that's all I have to say.

THE COURT: No, thank you. Wait -- you have a request to confer.

MR. KAROTKIN: And again, I'd just like to point out

one other thing. In Section 2.3(b)(ix) of the MSPA, which is liabilities retained by Old GM, it specifically says "all product liabilities arising in whole or in part from any accidents, incidents, or other occurrences that happened prior to the closing date". And I think that's consistent with what I said before in the appropriate interpretation of the section dealing with assumed liabilities.

THE COURT: All right, very good.

MR. KAROTKIN: Thank you, sir.

THE COURT: Thank you.

Any surreply limited to remarks that were made in reply? Mr. Novack?

MR. NOVACK: Yes, Your Honor. With response to -- in response to what counsel just read, on page 6 of the motion, quoting from section --

THE COURT: The underlying motion, Mr. Novack?

MR. NOVACK: Yes, Your Honor.

THE COURT: Give me a moment, please. All right.

MR. NOVACK: Page 6, paragraph 46, it says, "except for the assumed liabilities expressly set forth in the MSPA, none of the purchaser" et cetera, et cetera "shall have any liability for any claim that arose prior to the closing date, relates to production of vehicles prior to the closing date, or otherwise is assertable against the debtor or is related to the purchased assets prior to the closing date.

THE COURT: Give me a moment, please. I'm sorry, where were you reading?

MR. NOVACK: Page 6 of your motion.

THE COURT: Did you say paragraph 46?

MR. NOVACK: It's -- they're quoting from paragraph 46 of the sale order, I believe.

THE COURT: Okay, continue please, Mr. Novack.

MR. NOVACK: Thank you, Your Honor. That language has to be looked at in conjunction with Section 2.3(a)(ix) because paragraph 46 deals with claims that arose before the creation of the New GM. Our claim for wrongful death did not arise it, we did not have an assertable claim, there is no cause of action for anticipatory wrongful death. So if you look at paragraph 46 and then look at the language in 2.3(a)(ix), we have a situation where Beverly Deutsch's death does fall within the appropriate framework to be brought following the creation of the New GM.

The use of the word "or" is interesting. Counsel argues that there has --

THE COURT: "Or" in 46 or "or" in 2.3(b)(ix)?

MR. NOVACK: In 2.3(a)(ix). GM argues that the occurrence has to be independent. Well, the language is "accident, incident, or". They're distinct and unique. And the word "occurrence". Occurrence is something which happens. We have an occurrence, something which happened after the New

GM was created. So in order to give meaning to this language, and I note that GM's counsel did not give the Court an example of what would constitute a distinct and discrete occurrence that happened afterwards. I'm giving the Court an example. Beverly Deutsch is an example of a discrete -- distinct and discrete occurrence that happened afterwards. Doesn't violate the language. In fact, it's in conformance with the language, and it's consistent with the intent of what types of claims should be covered by the New GM when you look in terms of what claims are not going to be covered. Claims that preexisted do not continue on. We have a totally new, independent claim that did not exist at law or in fact until after the New GM was created. That claim falls within the distinct and discrete occurrence section.

Had they merely said "accident", we would not have an accident, a new accident that occurred. They could have said "accident that happened afterwards", and that would cover somebody who was injured before and died afterwards. But they didn't do that. They expanded what they will accept. They will accept accidents that happened afterwards; we don't have that. They will accept incidents that happened afterwards; questionable, incident is not defined. And they will accept distinct and discrete occurrences that happened afterwards. We have such a situation. We don't have to twist words. We don't have to modify agreements, we don't have to look for

exceptions. We merely have to apply the very language upon which they have accepted liability, and Beverly Deutsch's case falls within the four corners of that language. Thank you, Your Honor.

THE COURT: All right, very good. Dr. Sizemore?

DR. SIZEMORE: I just want to impose one more time, and I thank you for your patience. I -- the only thing I've come to ask for is time. And I understand if there were any irregularities, I am completely agreeable to amend those irregularities. But I would ask for the time to be able to do that. I take responsibility for all of my own actions, but the only reason I elaborated on the activities that had happened during my proceedings was to persuade you that I don't think I'm the only one to blame for the irregularity that happened. So extending me the time is only because I just don't think it was all my fault.

But -- and the proof of claim form was mentioned to me on or about December 16th by -- during a phone conversation with Ms. Benfield which I have documented in my cell phone. When she mentioned the proof of claim form, she mentioned that the deadline for me to file that was November 29th. And she had had conversation with me prior to November 29th, some time in October -- I'd have to check my records -- and never mentioned the proof of claim form. So if that were still available, I would have done that.

And the other thing I wanted to ask the Court -- if it's improper, I apologize -- but I wanted to know if the bankruptcy laws prohibited action against the Old or New GM regarding laws pertaining to negligence or fraud or any accusation in those departments. Do the same bankruptcy laws apply to tort actions in those areas, so that I can avoid having to come back if I were to consider filing an action.

THE COURT: Well, forgive me, Dr. Sizemore. I can't give you legal advice. I can rule on issues that are before me. And that's what I'm going to do.

DR. SIZEMORE: Okay.

THE COURT: Thank you. Okay, Mr. Rutledge, did you have any final surreply? Again, limited to anything that Mr. Karotkin said the second time around.

MR. RUTLEDGE: Your Honor, with respect to the argument put forth by GM's counsel, I first want to take exception to the statement that Dr. Sizemore or Mr. Robley cloud the issue with respect to filing a proof of claim or any conclusions -- excuse me -- that might be drawn in reference to what we're discussing today regarding the timing of filing a proof of claim, but only to say that if that were a route that were available, it would -- it would appear, Your Honor, that it would be working counter to the arguments that we're putting forth with the Court today, but certainly we leave open --

THE COURT: Well, lawyers do that to each other all

the time, I think, don't they, Mr. Rutledge?

MR. RUTLEDGE: Pretty much, Your Honor, I would agree. But secondly, more importantly, the contention that the Robley issues were decided by Judge Buchwald in the matter that was taken to the district court on appeal, I did read the decision of Judge Buchwald and find that, as a matter of fact, she deliberately did not rule on the substantive issues of that appeal. She deliberately found that Section 363(m) of the Bankruptcy Code controlled and that the fact that the appellants had not come before this Court and asked for -- or, obtained a stay foreclosed that appeal. Whether that -- I believe the decision on that was April 13th of this year. And whether that, in turn, will be appealed, I think is still an open issues. But I would simply say that on the record of the decisions rendered either in this court or by Judge Buchwald in the district court, there is no specific finding or ruling on the issue of the exceptions to the general rule when the assets can pass free and clear of liens and encumbrances. And there is no ruling with respect to our contentions specifically related to the product liability character of our cause of action. So I think it would be a misunderstanding to say that that was the case.

And finally, with respect to comments of counsel pertaining to notice, certainly there was a certificate of notice filed by counsel for GM. Certainly, there was notice by

publication. But the facts here are really identical to the facts that were in the Savage Arms case. It doesn't really matter why the person in Robley's situation didn't get notice. What is of most importance was that there was a failure to meet the requirements of procedural due process set forth in Mullane v. Central Hanover Bank and Trust. And procedural due process or finding that it fails to meet that standard does not require that we prove that GM intentionally left Mr. Robley out in the cold. It simply calls for an analysis whether the notice that was given was reasonably calculated to reach him and give him an opportunity to appear and respond. And we simply say that, in his case, it does not meet the procedural due process requirement.

The other issues that Mr. Karotkin raised on his rebuttal, Your Honor, we submit are -- to say that we're trying to go back and rewrite the agreement or trying to ask the Court to modify its order would be a misstatement. What we're asking, Your Honor, is Section 7.1 of the agreement says that the liabilities of persons like Robley would be barred to the extent permitted by law. So the agreement is all we need from the point of view of stating his position. And if you read the provisions of the order, the order itself says, "except as expressly permitted or otherwise provided by the MSPA or this order", and then it goes on to state the general proposition that claims are barred. So that exception, Your Honor, is

relevant in Mr. Robley's case. The fact that there is a failure to meet the minimum requirements of procedural due process, I think it's difficult for counsel to accept that, but that fact exempts Mr. Robley from the constraints that GM -- New GM tried to build into the sale agreement. And the consequences of a failure to meet substantive -- or, procedural due process in a bankruptcy case are well stated in the Savage Arms case and the same results that pertain there should pertain in the case of Mr. Robley.

THE COURT: All right, thank you.

All right, folks, I want you to take an early lunch, a long lunch, and to be back here at 1 o'clock p.m. at which time I will issue a ruling, or as soon as practical thereafter.

We're in recess.

(Recess from 11:13 a.m. until 1:32 p.m.)

THE COURT: I apologize for keeping you all waiting.

In these jointly administered cases under Chapter 11 of the Bankruptcy Code, General Motors, LLC, or New GM as we commonly call it, moves for an order of this Court, A, enforcing a previous order of this Court, B, enjoining certain plaintiffs from prosecuting or otherwise pursuing certain claims asserted against New GM, and C, directing those plaintiffs to promptly dismiss New GM from pending litigation with prejudice.

The motion is granted in substance, subject to the

refinement discussed below, to the extent it would affect those who did not object, Dr. Terrie Sizemore, Shane J. Robley, and Sanford Deutsch, to the extent Mr. Deutsch asserts claims other than his wrongful death claim. The motion is continued for a subsequent clarification of the record, and if necessary, an evidentiary hearing, concerning the claims asserted by Mr. Deutsch for his wife's wrongful death after the closing, and in particular, to ascertain the exact language in the final form of the ARMSPA and the reasons for any changes. The following are the bases for this determination.

After sufficient notice -- and I'll come back to the matter of notice -- and upon an evidentiary record, an extensive one, on July 5th, 2009, I entered an order authorizing the sale of substantially all of the debtors' assets to the predecessor of New GM pursuant to an amended and restated master sale and purchase agreement. We commonly call that document the ARMSPA. Pursuant to the ARMSPA and the related sale order, New GM agreed to assume certain liabilities of the debtors. The ARMSPA enumerated with substantial but not total clarity which liabilities would be assumed by New GM, and it made clear that all other liabilities would be retained by the debtors. With respect to product liability claims, the form of the ARMSPA dated "as of June 26th, 2009" provided in Section 2.3(a)(ix), "The assumed liabilities shall consist only of the following liabilities of sellers." And I'm omitting.

"(ix) All liabilities to third parties for death, personal injury, other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such vehicles and in each case manufactured, sold, or delivered by sellers (collectively "Product Liabilities"), which arise directly out of" and I'm emphasizing, "accidents, incidents, or other distinct or discrete occurrences that happened on or after the closing date and arise from such motor vehicle's operation or performance." It's the end of the lengthy quote. By contrast, a first amendment to amended and restated master sale and purchase agreement had a different language for Section 2.3(a)(ix) stating, with respect to the language I just emphasized, "accidents or incidents" that happen on or after the closing date.

Now, in oral argument on this motion, I asked whether the language that had been used in the briefs by each of the parties, which was the latter language, was the wrong language, in terms of describing what the parties, Old GM and New GM, had agreed to, and either out of good manners or confusion, nobody corrected me, or perhaps I was corrected, but in a way so subtle that I missed it. But when I looked back at that language over the lunch hour, I now wonder whether you all got it right and that the second language I just read trumps the first. But I have no evidence in the record of the exact order

of these seemingly different contractual provisions or especially the reasons for the difference. And I think that the difference could possible change the result.

However, for litigants other than the Deutsch family where Ms. Deutsch's injury was before the sale and her death came after, and in all other respects, the facts are much clearer and require neither supplementation nor discovery. The sale order makes clear that New GM was purchasing the assets free and clear of all liens, claims, encumbrances, and other interests including any rights or claims based on any theory of successor transferee, derivative or vicarious liability, or de facto merger or continuity of any kind or character. These provisions in the sale order were not slipped into the order with stealth but were hotly contested before me. One lawyer, in particular, Steve Jakubowski, litigated them vigorously and at length both before me and on appeal. I dealt with the successor liability issue extensively in my written decision, and the appeal by Mr. Jakubowski from that decision was dismissed by the district court where my decision was also affirmed.

Moreover, the sale order contained broad provisions prohibiting and enjoining any action or proceeding by any individual or entity to enforce or collect any claim against New GM on account of any claim against the debtors other than with respect to the assumed liabilities.

Since the debtors and New GM closed, pursuant to the ARMSPA on July 10, 2009, a date that I'll refer to as the closing date, six lawsuits have been filed against New GM asserting product liability claims based on accidents or incidents that occurred prior to the closing date. New GM has informed these plaintiffs of its position that the provisions in the ARMSPA and the sale order preclude them from pursuing their claims, but those plaintiffs have failed to dismiss their lawsuits against New GM. As a result of the plaintiffs' refusal or failure, New GM brought this motion before me seeking to enforce the sale order.

Of the six plaintiffs named in New GM's motion, three have filed formal objections, those objectors being Shane Robley, Terrie Sizemore, and Sanford Deutsch. Each objection presents somewhat different arguments, and I'll address them in order of increasing difficulty.

Turning first to dr. Sizemore's objection, she argues that New GM must remain a defendant in litigation that she commenced on a wholly prepetition accident until she is able to complete discovery on certain matters that have been fleshed out only in part. But her argument is, of course, contrary to the broad language in the sale order that enjoins any action or other proceeding in any judicial proceeding taken against New GM on account of any claim against the debtors other than that -- than assumed liabilities as that term is defined in the

sale order. So we must look to the ARMSPA, rather than the issues relating to the underlying claims, to ascertain the extent, if any, to which the ARMSPA covers her claims as an assumed liability.

That's a matter as to which she made no substantive arguments. I find no fault with her having acted as she did, especially in light of the fact that she's a pro se litigant, and certainly I wouldn't think of imposing sanctions on her, and I do not do so now. But the issue before me is, nevertheless, whether her lawsuit must be brought to a halt, or putting it differently, whether she can't bring it -- continue it anymore, and the answer is that she can't continue it anymore. That's especially so since the discovery she seeks relates to the merits of her claims as contrasted to the content or intent of the ARMSPA whose terms defined the extent to which she could or could not properly proceed.

Without dispute, Dr. Sizemore was injured in a prepetition accident. As relevant here, the ARMSPA unequivocally provides that for claims to have been assumed by New GM when they are based on an accident taking place at some point in time, those accidents to be allowed to be assumed by New GM must have taken place on or after the closing date. Dr. Sizemore simply doesn't qualify under that language.

Since Dr. Sizemore's claims result from an accident prior to the closing date, she might have a prepetition claim

against Old GM, an issue that I haven't been asked to decide today and which I'm not currently deciding. But her claim, if any, is certainly not an assumed liability. Therefore, Dr. Sizemore will be stayed from taking any action against New GM on account of or arising from her preclosing date accident, including for the avoidance of doubt, continuing litigation against New GM for the purpose of conducting discovery on any issue.

Turning next to the objection filed by Shane Robley, Mr. Robley argues that New GM's motion should be denied because, one, Mr. Robley was deprived of procedural due process because he didn't receive actual notice of the sale motion that led to the sale order; two, the sale to New GM did not convey those assets free and clear of his product liability claim; and three, that selecting July 10, 2009 as the closing date was arbitrary, capricious, and unjust, or, putting it somewhat differently, that I should force New GM to assume his and perhaps other liabilities by reason of my notions of equity.

New GM disputes each of those contentions, and on the facts and law here, I must agree with New GM. It's agreed by all concerned that Mr. Robley didn't get mailed a personal notice of the 363 hearing that resulted in the sale order, very possibly because as of that time, Mr. Robley had not sued either Old GM or New GM yet. It's also agreed that Old GM and New GM did not give personal notice of the 363 hearing to all

of the individuals who had ever purchased a GM vehicle, and instead, supplemented its personal notice to a much smaller universe of people by notice by publication. It's also undisputed that I expressly approved the notice that had been given in advance of the 363 hearing including the notice by publication, which I found to be reasonable under the circumstances.

Mr. Robley relies on the First Circuit's decision in Western Auto Supply Company v. Savage Arms, Inc., 43 F.3d 714 (1st Cir, 1994), in which the First Circuit Court of Appeals, speaking through Judge Conrad Cyr, a highly respected former bankruptcy judge, agreed with the district judge that the bankruptcy court had erred when the bankruptcy court enjoined prosecution of product line liability actions brought against the purchaser of the debtor's business for lack of notice. But the critically important distinction between this case and the Savage Arms case is that here, and not there, notice was also given by publication. We all agree that due process requires the best notice practical, but we look to the best notice that's available under the circumstances. Here, under the facts presented in June of 2009, GM didn't have the luxury of waiting to send out notice by mail to hundreds of thousands of GM car owners, and instead gave notice by publication, which I approved. In Savage Arms, the debtor "conceitedly made no attempt to provide notice by publication" (43 F.3d at 721) and

the notice that was given was never determined, "appropriate in the particular circumstances" (Id. at 722). In other words, the First Circuit found it significant that the debtors in Savage Arms didn't do the very thing that was done here.

As I've indicated, I've already determined that notice was appropriate in the particular circumstances, and provided for that in an order that entered on July 5th, 2009 that remains valid today. Moreover, it's obvious that the notice was, indeed, appropriate and did what it was supposed to do because it permitted Mr. Jakubowski, in particular, to make effectively and well the very arguments that Mr. Robley's counsel would, himself, have to make either now or back then and which I then considered and rejected.

I've already ruled on the arguments dealing with the underlying propriety of a free and clear order cutting off product liabilities claims as set forth in my opinion published at 407 B.R. 463. Until or unless some higher court reverses my determination -- and neither of the district courts who've ruled on that determination have yet done so (see 2010 W.L. 1524763 and 2010 W.L. 1730802) -- they're res judicata, or at least res judicata subject to any limitations on the res judicata doctrine requiring a final order. And of course, they're stare decisis. I found these arguments to be unpersuasive last summer, and considering the great deal with which my previous opinion dealt with those exact issues, I am

not of a mind, nor do I think I could or should, come to a different view on those identical issues today.

Lastly, of course, I sympathize with Mr. Robley's circumstances, just as I've sympathized with each of the tort victims who have been limited to the assertion of prepetition claims against Old GM. But I'm constrained to act in accordance with the law, and can't substitute my own notions of fairness, equity, or sympathy for what the law requires me to do. That's especially so since choosing a closing date required some date to be chosen and there's no evidence in the record to lead me to believe that the closing date was done in any way to particularly target Mr. Robley.

Finally, turning to Mr. Deutsch, Mr. Deutsch, understandably, doesn't argue that the personal injury claims he might otherwise be able to assert are prepetition claims. But he argues that because Ms. Deutsch died after the closing, her resulting wrongful death claim didn't come into being until that time. And he further argues that the death of Ms. Deutsch constituted an incident separate and apart from an event upon which the cause of action accrued. Thus, he argues, that while the wrongful death claim wasn't assumed because of an "accident" taking place after the closing, it was an "incident" or especially a "distinct and discrete occurrence" as appearing in some of the versions of the ARMSPA. However, the problem I have is that the record is now confused as to which version of

the ARMSPA I should be looking at, and especially, where there are differences, what are the reasons for those differences?

If the language with "other distinct and discrete occurrences" was added, it would broaden the universe of claims that were assumed. Conversely, if it were deleted, it would narrow them. I thought, during the course of oral argument, that the language was added, but now I'm not so sure, and I especially don't know the reasons for the changes. And, so far as I can tell, I received no evidence with respect to the changes, or especially the reasons for them.

In any event, "incidents" remains undefined, and it obviously must mean something different from "accidents", which is what we almost always think of as causing product liability claims. Also, a death is at least seemingly an incident by many common uses of that term. It's obviously quite different than an accident, and I have to assume that "incidents" was included to say something more than use of the word "accidents" would say. There's a principle of law under the State of New York whose laws apply to the ARMSPA that contracts are construed, when possible, as to give effect and meaning to every word and expression contained in an agreement. See, for example, Atwater & Company v. Panama Railroad Company, 246 NY 519, Benvenuto v. Rodriguez, 279 A.D. 162. So I think I or any other Court would be reluctant to disregard whatever was in the agreement besides the word "accident", and we'd all have to

focus on whatever supplementary words there were in any analysis going forward.

We all agree, or should agree, that when the cause of action came into being under California law is irrelevant. What does matter is what the ARMSPA says it covers, but at this point, I don't have that answer with sufficient certainty to decide an issue that's obviously of very great importance to the Deutsch family, and I can't decide this aspect of the motion on the existing record. Accordingly, the portion of the motion that deals with Mr. Deutsch's wrongful death claim will be severed for supplementation of the record. The remainder of the motion will be granted. However, though I, of course, think I got it right when I issued the successor liability portion of my early rulings, I'm going to stay, rather than require dismissal of, the litigation brought by the three objectors insofar as I've ruled on their actions so that the objectors won't be prejudiced if my earlier rulings, which now are good law, are modified in any respect material to their claims. If, after a final order emanating out of the appellate courts, my earlier rulings remain good law, and prepetition claims then still can't be brought against New GM, New GM will be free, if it wishes, to come back to me with a request that they be dismissed, which, as I understand is the third prong of GM's motion before me today.

With all of that said, I think it would be helpful if

Old GM reconsider whether it will consent to any of the objectors filing a late proof of claim, and that it likewise consider doing the same for any others who were the subject of this motion and who may also have been told that they shouldn't be proceeding with their lawsuits without also being told of the need to file proofs of claim. If Old GM is unwilling to consent to that, persons who had those conversations may, of course, file their own motions for leave to file late claims, or they may file them and then defend any motions to dismiss or expunge those claims if based on tardiness grounds.

Mr. Karotkin and Mr. Novack, you're to agree with each other on a timetable for supplementing the record and for teeing up the remaining issue. Mr. Karotkin, I would like you, if you would, to settle an order in accordance with this ruling for the elements of the motion that were granted.

MR. KAROTKIN: Can I ask a question, sir?

THE COURT: Yes, sir.

MR. KAROTKIN: Just so I'm clear about your staying of dismissal, does that mean, Your Honor, that the plaintiffs can actually proceed with the litigation, or is the status quo to be maintained? I'm not exactly sure what you had in mind. Or perhaps --

THE COURT: When I say stay -- forgive me for interrupting you, Mr. Karotkin.

MR. KAROTKIN: Sorry.

THE COURT: When I say stay, I mean that each litigation against New GM that was a subject of your motion must come to a full stop. They don't have to file a notice of dismissal, but those litigations can't go anywhere, just as if they were in automatic stay.

MR. KAROTKIN: Okay.

THE COURT: If my earlier decision ultimately is affirmed -- or, actually, the converse is a better way of saying it. If it isn't altered on appeal after all appeals have been exhausted, if New GM wants to come back to me for a supplemental order that those actions that are then stayed be dismissed, my ruling's without prejudice to New GM making any such motion. But those motions are to go nowhere until or unless my earlier ruling is modified in some way as it affects the successor liability issue.

MR. KAROTKIN: You mean those actions, not the motions.

THE COURT: I'm wondering if I misspoke.

MR. KAROTKIN: I think you said, if I may, Your Honor, "those motions should not go forward". I think you meant those actions --

THE COURT: Yes.

MR. KAROTKIN: -- or those lawsuits.

THE COURT: Correct. That's what I meant.

MR. KAROTKIN: All right, thank you, sir.

THE COURT: Okay, anything else anybody? Yes, Doctor.

DR. SIZEMORE: I apologize. I understand that you want me to stop the product liability action. Does that -- there are two actions in Medina County. One is the product liability --

THE COURT: Everything must come to a stop.

DR. SIZEMORE: Even the action for discovery?

THE COURT: Yes.

DR. SIZEMORE: Okay.

THE COURT: There are no sanctions for anything that's happened before, but everything must come to a full stop.

DR. SIZEMORE: By when?

THE COURT: I can give you a reasonable time to comply. How much time do you need to bring them to a stop?

DR. SIZEMORE: Eight days.

THE COURT: I don't think eight days will be a problem. Mr. Karotkin?

MR. KAROTKIN: No, sir, that's fine.

THE COURT: That's fine.

Yes, sir?

MR. NOVACK: If I heard Your Honor correctly, you said was granted as to Sanford Deutsch as an individual. Sanford Deutsch as an individual in the third cause of action -- excuse me, in the third amended complaint has not brought claims against the New GM. His individual claim was for loss of

consortium which was asserted against all defendants except the New GM, so I do not believe in that regard there is any need for dismissal with respect to Mr. Deutsch as an individual. His sole capacity vis-a-vis the New General Motors is as the personal representative of the estate on behalf of the wrongful death claims.

THE COURT: Fair enough, and I think what it might be helpful for you to do is to put your noodle together with Mr. Karotkin so that the facts as you've described them and the spirit of my order are reconciled. The underlying concept was, first, although I didn't speak to it, I had assumed that you can go against anybody other than Old GM and New GM, and that the issue that you had raised that I thought was one of difficulty was for the wrongful death claim that arose when Ms. Deutsch died, but that any other claims you had that you could have asserted earlier would have to be stayed at least until the appellate courts act differently -- that you had asserted against New GM would have to be stayed. And you're nodding. Are we -- I gather we're on the same page?

MR. NOVACK: Yes, we have not asserted any claims against New GM except wrongful death claims.

THE COURT: Oh, okay. And that one is what I need further help from you folks on. I would like -- I won't order it without an opportunity for each side to be heard, but I would like you to put that on hold until we can get this sorted

out before me.

MR. NOVACK: I'm sorry? To put --

THE COURT: I would like the issue that I couldn't decide today to be put on a temporary hold until I can rule on the remaining issue. But I will hear argument from you and Mr. Karotkin on that if you think that would prejudice you in some material way. In other words, on the one issue that I haven't ruled on yet.

MR. NOVACK: I apologize for not following the Court. I thought that the only issue that relates to Mr. Deutsch is whether or not he is able, on behalf of the estate, to bring a wrongful death claim for the death that arose after the creation of the New GM, which would depend upon the interpretation of whatever would be the relevant language, which is still subject to some uncertainty that we are going to clarify. I thought that was the --

THE COURT: Exactly.

MR. NOVACK: Okay.

THE COURT: And what I'm saying is until I can rule on that remaining issue, my tentative, California-style, is that I would like your action in California on that issue to remain in a holding pattern until the open issues can be determined.

MR. NOVACK: Okay, so that would mean, as far as California is concerned, that there would be no discovery either to or from the New GM in that wrongful death action

until this matter is resolved.

THE COURT: Yes.

MR. NOVACK: Yes.

THE COURT: If you want to be heard on that -- if there's some material prejudice to you, I'll hear that, but that's what I would prefer to do.

MR. NOVACK: Let me just briefly address the issue. There is outstanding discovery as to GM on that issue with respect to certain protocols and testing. Some of that discovery can be had from codefendants such as Autoliv and Takata, and I have agreed to a protective order as to them which may reveal the same documentation that GM would have given us. There may be some documentation that those two defendants do not have that only GM has, and I would have no way of getting that except against GM. If GM is no longer going to be a party, New GM, I would have to do third-party discovery as against the New GM for that material. If they are a party, then obviously, the manner by which I can obtain that information is relieved.

I would anticipate, or hope at least, that the remaining issue for Your Honor to consider would be resolved before the need or the dire need for any discovery against GM -- the New GM that I could not get against the other defendants, so I have no problem, currently, with staying -- having a mutual stay agreement or an order for mutual stay as

to discovery between plaintiff and the New GM until Your Honor issues a definitive ruling concerning the remaining issue on the contract.

THE COURT: Um-hum. Mr. Karotkin, do you want to weigh in on this?

MR. KAROTKIN: Do you want me to approach?

THE COURT: It's always as helpful for a guy as tall as you.

MR. KAROTKIN: I think what counsel said is that he's okay with a mutual stay remaining in effect pending your determination. Hopefully that will be done rather expeditiously, and I guess if it becomes an issue in terms of the discovery he needs, if this takes longer than we expect, then either we can work it out with counsel or we can come back to Your Honor.

THE COURT: You know what I think I'd like to have you guys do on this, see if you can come up with a stip or consent order papering any deal that you guys have.

MR. KAROTKIN: Okay.

THE COURT: If, and I suspect that it's unlikely, you agree to disagree, then you can set it up via conference call that I can deal with it on, but somehow, I have a sense that the two of you folks are going to resolve it satisfactorily without me needing to get involved.

MR. KAROTKIN: I certainly expect we will be able to

do that.

THE COURT: Okay.

MR. KAROTKIN: Thank you, sir.

THE COURT: Fair enough. And Mr. Novack, except for evidentiary hearings, I will give you permission, if you want to avail yourself of it, to appear by telephone -- actually, that's for everybody who is not here in New York City. I'll give you permission to appear by telephone and without having to bring local counsel into the courtroom with you unless you want to.

MR. NOVACK: Thank you. I appreciate that, Your Honor. And just one point of clarification, if I may.

THE COURT: Yes.

MR. NOVACK: What time frame would Your Honor -- in terms of Your Honor's schedule, what time frame would Your Honor like for us to work out a briefing schedule with respect to the remaining issue on the Deutsch case.

THE COURT: I'd like you to agree with Mr. Karotkin on that, and again, paper it by a stip or consent order. If it's reasonable, I'm going to approve it. Whatever you guys agree upon, as long as it's not pushing this issue way back, will be fine with me.

MR. NOVACK: Thank you, Your Honor.

THE COURT: Very well. Okay.

Yes, sir, Mr. Rutledge.

MR. RUTLEDGE: Yes, Your Honor, I just want to make sure that I understand my part of this. We will take no further action in the case in the Western District of Tennessee but the Court is holding the requested relief in the motion in abeyance pending the opportunity to appeal the matters that we have brought before the Court today. Do I have that correct?

THE COURT: I think you did, but I'd rather say it my way. If it weren't for the fact that the appeal that Mr. Jakubowski brought is, to my understanding, not yet to a final end, and that he may have the right to go to the circuit, or maybe he's already at the circuit -- and one of my problems is that I don't always know what happens to stuff that I issue after it has gone up -- your action is stayed but not dismissed until Mr. Jakubowski's action comes to an end.

There is a separate right of appeal which could be of relevance, which is you have the right to appeal my decision which, unfortunately, is against you. Your time to appeal that order is, of course, a different time to appeal, and that will run from the time of entry of the order that I told Mr. Karotkin to prepare, and not from the time of this dictated decision. Not from today.

MR. RUTLEDGE: That's my question, Your Honor. So we will take no further in the case against New GM, but we do have the opportunity to pursue an appeal from the decision today, and also to await the course of appeal that is ahead of us and

that Mr. Jakubowski possibly is pursuing -- I think that's in the Campbell claim, as I recall.

THE COURT: I think you're right. You have the right to appeal -- and I think it's an appeal; it may be a motion for leave to appeal; I'm not focusing on that; that's a district court issue, not my issue -- from my order to the District Court of the Southern District of New York, and I can't give you legal advice, but I think you have fourteen days to do that from the time of entry of the order that Mr. Karotkin's going to prepare and which you have the right to comment on, if you choose to. Assuming that my order is entered and remains in place, I'm going to expect the -- is it in the Western District of Tennessee?

MR. RUTLEDGE: That is correct, Your Honor.

THE COURT: In Memphis, or --

MR. RUTLEDGE: In Memphis, yeah.

THE COURT: I expect that until and unless my order is reversed, my order will be complied with, and if the Campbell action appeal turns out to be successful, if you can't get agreement from Mr. Karotkin as to what to do, you can come back to me from relief in that regard. I would expect you, though, Mr. Rutledge, that even before Mr. Karotkin's order is entered, that you not do anything that if that order had been entered, would prohibit.

MR. RUTLEDGE: Your Honor, we have not taken any

action. There's only been a scheduling order that was issued by the Court, and I will take no further action. But I did want to be clear about what appeals the Court was talking about with regard to the holding a dismissal in abeyance pending appeal. And I think I understand it, now, Your Honor.

THE COURT: Yeah, because it's been subject to a double entendre, I certainly understand the questions.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: Okay. Anything else? Anybody? Okay, thank you very much, folks. Have a good day.

MR. KAROTKIN: Thank you, Your Honor.

(Proceedings concluded at 2:14 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dena Page

Digitally signed by Dena Page
DN: cn=Dena Page, c=US
Reason: I am the author of this document
Date: 2010.06.02 16:37:51 -04'00'

_____

Dena Page

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: June 2, 2010